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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CAROL A. BEUCHAT)	CV No. '11CV1346 LAB BGS
Plaintiff,)	
)	COMPLAINT FOR COPYRIGHT
vs.)	INFRINGEMENT AND DMCA
)	VIOLATIONS WITH
DANNY DAY)	DEMAND FOR JURY TRIAL
Defendant.)	
)	

Plaintiff Carol A. Beuchat states her claims against Defendant Danny Day as follows:

JURISDICTION AND VENUE

1. This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1338(a).
2. This Court has personal jurisdiction over Day by virtue of his transacting, doing, and soliciting business in this District, and because a substantial part of the relevant events occurred in this district.
3. Venue is proper under 28 U.S.C. §§ 1391(b)(1-2) and 1400(a) because the defendant resides or may be found in this District.

THE PARTIES TO THIS COMPLAINT

4. Plaintiff Carol A. Beuchat ("Beuchat") is an individual who resides, and at all times herein mentioned did reside, in Mission Viejo, California.

5. Upon information and belief, Defendant Danny Day ("Day") is an individual who is a citizen of California.

6. Day may be served at his place of business at 14428 Janal Way, San Diego, California, 92129.

OPERATIVE FACTS

7. Beuchat is a full-time professional photographer who specializes in dog photography.

8. On or about March 21, 2010, Beuchat photographed a Newfoundland show dog owned by non-party Vu Nguyen ("Nguyen"). Beuchat made one of the photographs into a photographic portrait of the dog (the "Photograph," as shown in Exhibit "A").

9. The Photograph in perspective, orientation, positioning, lighting and other details is entirely original, distinctive, and unique. As such, the Photograph is subject matter protectable under the Copyright Act.

10. Beuchat embedded by digital means a watermark on the front of Photograph in the form of a copyright notice stating "Beuchat © 2010" (the "Watermark").

11. Beuchat made an 8" x 10" print of the Photograph that included the Watermark and placed a sticker on the back with her copyright management information stating "© Carol Beuchat; All Rights Reserved; www.CarolBeuchat.com; email@CarolBeuchat.com" (the "Print"). Beuchat delivered this Print to Nguyen sometime in late March 2010.

12. Beuchat provided the digital file of the Photograph that contained the Watermark to Dog News Magazine, which then reproduced, displayed, and distributed the Photograph as the cover of its April 16, 2010 issue (the "Magazine Cover" as shown in Exhibit "B").

13. Beuchat's Watermark was visible on the Magazine Cover and the Print.

14. Upon information and belief, Nguyen later commissioned Day to create a painting of his Newfoundland show dog. Day requested a photograph of the dog

from Nguyen to create the painting.

15. Upon information and belief, Nguyen gave Day a copy of the Magazine Cover and Print.

16. Day thereafter created a painting (the "Painting," as shown in Exhibit "C").

17. Upon information and belief, Nguyen paid \$7,200.00 for the Painting.

18. Beuchat never authorized Day to copy, display, distribute, or to create a derivative work of the Photograph.

19. Day displayed and distributed the Painting on his website at www.dannyday.com, on his Facebook page, and in an art gallery.

20. Beuchat's Watermark was not on the Painting.

21. Day included his name "Danny Day" on the Painting.

22. Beuchat is and always has been the sole proprietor of all right, title, and interest in and to the copyright in the Photograph. Beuchat is the author and copyright owner of the Photograph pursuant to 17 U.S.C. § 201.

23. Beuchat complied with all respects with the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended, and all other laws and regulations governing copyrights and has secured the exclusive rights and privileges in and to the copyrights for the Photograph. The Register of Copyrights for the U.S. Copyright Office issued Beuchat a Certificate of Registration for the copyright to the Photograph, number VA 1-742-592, effective October 7, 2010 (as shown as Exhibit D).

FIRST CAUSE OF ACTION

Copyright Infringement – 17 U.S.C. §§ 101 *et seq.*

24. Beuchat re-alleges and incorporates by reference paragraphs 1 through 23 above.

25. Day had access to the Photograph through Nguyen from the Print and the Magazine Cover.

26. The Painting is a reproduction of the Photograph.

27. The Painting is at least substantially similar to the Photograph and is virtually identical to the Photograph.

28. Day did not have authorization of Beuchat or the law to reproduce, distribute, display, or create derivative works of the Photograph.

29. Day violated Beuchat's exclusive rights granted in 17 U.S.C. § 106, specifically her exclusive right to: (1) reproduce the copyrighted work in copies; (2) prepare derivative works based on the copyrighted work; (3) distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; and (4) display the copyrighted work publicly.

30. As the Photograph was taken in March 2010 and the Painting was made thereafter, all claims of infringement are within the three-year statute of limitations period pursuant to 17 U.S.C. § 507(b).

31. As a direct and proximate result of his wrongful conduct, Day has realized and continues to realize profits and other benefits rightfully belonging to Beuchat for the Photograph. Accordingly, Beuchat is entitled to and seeks an award of actual damages and profits pursuant to 17 U.S.C. § 504(b)

SECOND CAUSE OF ACTION

Removal of Copyright Management Information – 17 U.S.C. §§ 1201 *et seq.*

32. Beuchat re-alleges and incorporates by reference paragraphs 1 through 23 above.

33. The Watermark on the Photograph is identifying information about the copyright owner, constituting copyright management information pursuant to 17 U.S.C. § 1202(c)(1), (2) and (3).

34. Day's name on the Painting is identifying information about the copyright owner, constituting copyright management information pursuant to 17 U.S.C. § 1202(c)(2).

35. Day, without the authority of Beuchat or the law, intentionally removed from and altered Beuchat's copyright management information and distributed the Painting knowing that copyright management information had been removed and altered, knowing or having reasonable grounds to know that such removal and alteration would induce, enable, facilitate, or conceal a copyright

infringement, in violation of 17 U.S.C. § 1202(b).

36. Day, without the authority of Beuchat or the law, knowingly and with the intent to induce, enable, facilitate, or conceal infringement provided copyright management information that is false and distributed copyright management information that is false, in violation of 17 U.S.C. § 1202(a).

37. As a direct and proximate result of Day's wrongful conduct, Beuchat has suffered damages and so is entitled to the remedies set forth under 17 U.S.C. § 1203.

38. Specifically, Beuchat is entitled to and seeks actual damages pursuant to 17 U.S.C. § 1203(c)(2).

39. In the alternative, Beuchat is entitled to and seeks statutory damages pursuant to 17 U.S.C. § 1203(c)(3)(B), and costs of litigation and attorney's fees pursuant to 17 U.S.C. § 1203(b)(4-5).

PRAYER FOR RELIEF

WHEREFORE Beuchat prays that this Honorable Court:

1. Issue an order that Day's unauthorized conduct violates Beuchat's rights under the Federal Copyright Act at 17 U.S.C. §101, et seq.;
2. Order Day to account to Beuchat for all gains, profits, and advantages derived from Day's infringement of the Photograph;
3. Order Day to pay Beuchat all profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate) for Day's infringement of the Photograph;
4. Order Day to pay Beuchat all profits and damages in such amount as may be found pursuant to 17 U.S.C. § 1203(c)(2) (with interest thereon at the highest legal rate) for violating Beuchat's rights pursuant to 17 U.S.C. § 1202;
5. In the alternative, if Beuchat so elects, order Day to pay Beuchat maximum statutory damages in the amount of \$25,000 for each unauthorized violation of 17 U.S.C. § 1202 pursuant to 17 U.S.C. § 1203(c)(3)(B), or such other amount

as may be proper pursuant to 17 U.S.C. § 1203(c)(3)(B);

6. Order Day to pay Beuchat her costs of litigation and reasonable attorneys' fees in this action, pursuant to 17 U.S.C. § 1203(b)(4-5);
7. Order Day to deliver to Beuchat all copies of the Painting and all other materials containing such infringing copies of the Photograph in Day's possession, custody or control;
8. Order Day, his agents, and servants to be enjoined during the pendency of this action and permanently from infringing the copyright of Beuchat in any manner and from reproducing, distributing, displaying, or creating derivative works of the Photograph; and
9. Order such other and further relief as this Honorable Court deems just and equitable.

Beuchat demands a jury trial on all of the foregoing counts.

Dated: June 13, 2011.

Respectfully submitted,

s/ Carolyn E. Wright
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Carol A. Beuchat

DEFENDANTS

Danny Day

(b) County of Residence of First Listed Plaintiff Orange County, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Office of Carolyn E. Wright, LLC, PO Box 430, Glenbrook, NV 89413, 775-588-5147

Attorneys (If Known)

'11CV1346 LAB BGS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

17 USC 101 et seq; 17 USC 1202-3

Brief description of cause:

Copyright Infringement and violation of the Digital Millenium Copyright Act

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6-13-11

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____